

JUL 17 2008
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

JUN 21 2006

-FILED-
CLERK'S OFFICE

RELEASER FOR PUBLICATION

DOCKET NO. 1763

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

RELEASER FOR PUBLICATION

TRANSFER ORDER

This litigation currently consists of five actions in the District of New Jersey and one action each in the Northern District of Ohio and the Northern District of Oklahoma, as listed on the attached Schedule A. Defendant Regeneration Technologies, Inc. (RTI) moves the Panel, pursuant to 28 U.S.C. § 1407, for an order centralizing these seven actions in the District of New Jersey.¹ RTI's motion is supported by defendant Tutogen Medical, Inc., defendant SpinalGraft Technologies, LLC (SGT) and associated entities,² and plaintiffs in two District of New Jersey actions. Plaintiffs in two potential tag-along actions pending, respectively, in the District of New Jersey and the Northern District of Florida, oppose centralization; these plaintiffs alternatively support transfer to the Northern or Southern District of Florida. Plaintiff in the other Northern District of Florida potential tag-along action supports transfer to the Southern District of Florida. Plaintiffs in two potential tag-along actions in the Southern District of West Virginia and plaintiffs in a potential tag-along action in Northern District of Ohio support transfer to the Southern District of West Virginia. Additionally, plaintiffs in two Northern District of Alabama potential tag-along actions and plaintiffs in the Southern District of Ohio potential tag-along action support transfer to the district in which their respective action is pending.

¹ The Panel has been notified of an additional 42 actions pending in the following districts: eight actions in the Middle District of Louisiana; five actions in the District of New Jersey; three actions each in the Eastern District of New York and the Northern District of Ohio; two actions each in the Northern District of Alabama, the Northern District of Florida, the Northern District of Georgia, the Northern District of Iowa, the District of South Carolina, the Western District of Tennessee, and the Southern District of West Virginia; and one action each in the Southern District of California, the Southern District of Indiana, the Western District of Kentucky, the District of Minnesota, the Western District of New York, the Middle District of North Carolina, the Southern District of Ohio, the Eastern District of Pennsylvania, and the Eastern District of Texas. These actions and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

² SGT is a single-member limited liability company. Its sole member is Medtronic Sofamor Danek USA, Inc., which is a wholly owned subsidiary of Medtronic Sofamor Danek, Inc., which in turn is a wholly owned subsidiary of Medtronic, Inc. These entities are named in various combinations in all but one action now before the Panel.

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IMAGED JUN 21 2006

On the basis of the papers filed and hearing session held, the Panel finds that these seven actions involve common questions of fact, and that centralization under Section 1407 in the District of New Jersey will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share allegations concerning a scheme by defendant BioMedical Tissue Services, Ltd. (BTS) to harvest tissue from human corpses without proper consent and sell the tissue to other defendants, which are tissue processing companies. Plaintiffs claim that the defendant processors processed the BTS-supplied tissue without checking or following procedures to determine the origin, nature, or suitability of the tissue for human transplantation. Moreover, some plaintiffs contend that the processor defendants engaged in flawed procedures that did not cleanse the received tissue as those defendants represented; relatedly, plaintiffs also allege that defendants distributing the tissue failed to check or follow procedures to determine the source or viability of such tissue. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

Objecting plaintiffs contend that centralization is not needed because the actions lack a common factual basis, since they necessarily involve different tissue implants, several different defendants, and likely different damages. We disagree. The alleged improprieties regarding the illegal harvesting, flawed processing and/or inappropriate distributing of human tissue forms the factual backdrop to all actions presently before the Panel. Transfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common parties and witnesses are not subjected to discovery demands that duplicate activity that will occur or has occurred in other actions. Also, discovery with respect to any case-specific issues can proceed concurrently with discovery on common issues. *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976).

We conclude that the District of New Jersey is an appropriate transferee forum for this litigation. The District of New Jersey is where relevant documents and witnesses may be found, since BTS was based there, and one of the defendant tissue processors and several funeral homes from which the tissue was harvested are also located there.³ By centralizing this litigation before Judge William J. Martini, who presides over all present actions and potential tag-along actions pending in the District of New Jersey, we are assigning this litigation to a jurist who has the experience necessary to steer this litigation on a prudent course.

³ This district is the closest suggested transferee district to New York, which is the situs of ongoing criminal proceedings involving BTS's principals, Michael Mastromarino and Joseph Nicelli.

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IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable William J. Martini for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A.

FOR THE PANEL:

Wm. Terrell Hodges

Wm. Terrell Hodges
Chairman

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SCHEDULE A

MDL-1763 -- In re Human Tissue Products Liability Litigation

District of New Jersey

Gary Pieper v. Medtronic Sofamor Danek, Inc., et al., C.A. No. 1:06-433
Arlene Sechtin v. Regeneration Technologies, Inc., et al., C.A. No. 2:06-135
Anh Nguyen, et al. v. Medtronic Sofamor Danek, Inc., et al., C.A. No. 2:06-417
Anthony J. Vitola, et al. v. BioMedical Tissue Services, Ltd., et al., C.A. No. 2:06-466
Heather Augustin v. Medtronic Sofamor Danek, Inc., et al., C.A. No. 2:06-467

Northern District of Ohio

Cindy Sciuva v. SpinalGraft Technologies, LLC, et al., C.A. No. 1:06-216

Northern District of Oklahoma

Paula L. Coleman v. Medtronic, Inc., et al., C.A. No. 4:05-741

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**UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

Judge Anthony J. Scirica
United States Court of Appeals
Third Circuit

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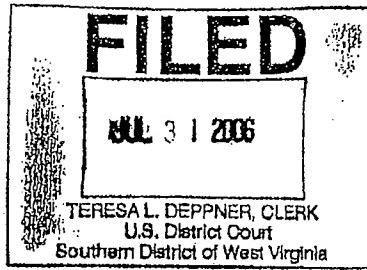
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<http://www.jpml.uscourts.gov>

July 27, 2006

William T. Walsh, Clerk
Martin Luther King, Jr. Fed. Bldg. & U.S. Courthouse
50 Walnut Street, 4th Floor
Newark, NJ 07102

Re: MDL-1763 -- In re Human Tissue Products Liability Litigation
(See Attached CTO-1)



Dear Mr. Walsh:

I am enclosing a certified copy and one additional copy of a conditional transfer order filed by the Panel in the above-captioned matter on July 11, 2006. As stipulated in Rule 7.4(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), transmittal of the order has been stayed 15 days to give any party an opportunity to oppose the transfer. The 15-day period has now elapsed, no opposition was received, and the order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

Denisha Spurrier
By *Denisha Spurrier*
Deputy Clerk

Attachment

cc: Transferee Judge: Judge William J. Martini
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: (See Attached List of Clerks)

JPML Form 36

B
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JUL 11 2006

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DOCKET NO. 1763

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION
(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-I)

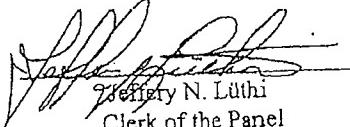
On June 21, 2006, the Panel transferred two civil actions to the United States District Court for the District of New Jersey for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. See ___ F.Supp.2d ___ (J.P.M.L. 2006). With the consent of that court, all such actions have been assigned to the Honorable William J. Martini.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of New Jersey and assigned to Judge Martini.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the District of New Jersey for the reasons stated in the order of June 21, 2006, and, with the consent of that court, assigned to the Honorable William J. Martini.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of New Jersey. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


Jeffrey N. Lüthi
Clerk of the Panel

Inasmuch as no objection is pending at this time, the stay is lifted.

JUL 27 2006

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

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**SCHEDULE CTO-1 - TAG-ALONG ACTIONS
DOCKET NO. 1763
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION**

<u>DIST. DIV. C.A. #</u>	<u>CASE CAPTION</u>
ALABAMA NORTHERN ALN 2 06-712 ALN 2 06-871	Teresa Woathers v. Michael Mastromarino, et al. Frank D. Fife v. BioMedical Tissue Services, Ltd., et al.
CALIFORNIA SOUTHERN CAS 3 06-870	Eric Simila, et al. v. BioMedical Tissue Services, Ltd., et al.
FLORIDA NORTHERN FLN 1 06-73 FLN 1 06-91	Harriet P. King v. Medtronic Sofamor Danek USA, Inc., et al. Willie James Jones v. Regeneration Technologies, Inc., et al.
GEORGIA NORTHERN GAN 1 06-1056 GAN 1 06-1407	Norman Zappa v. BioMedical Tissue Services, Ltd., et al. Darlene Adams v. Medtronic Sofamor Danek USA, Inc., et al. Vacated 7/21/06
IOWA NORTHERN IAN 3 06-3020 IAN 3 06-3027	Jill Symonds v. BioMedical Tissue Services, Ltd., et al. Robert Kalvig v. BioMedical Tissue Services, Ltd., et al.
INDIANA SOUTHERN INS 1 06-332 INS 1 06-930 INS 1 06-931	Brian Springer v. Biomedical Tissue Services, Ltd., et al. Craig Kimmel v. Michael Mastromarino, et al. A.R., et al. v. Michael Mastromarino, et al.
KENTUCKY WESTERN KYW 3 06-185	Gary Howlett, et al. v. Biomedical Tissue Services, Ltd., et al.
LOUISIANA MIDDLE LAM 3 06-170 LAM 3 06-221 LAM 3 06-222 LAM 3 06-275 LAM 3 06-313 LAM 3 06-314 LAM 3 06-315 LAM 3 06-316	Darrel Bourque, et al. v. Regeneration Technologies, Inc., et al. Deborah D. Brunet, et al. v. Regeneration Technologies, Inc., et al. Deridre Caruthers, et al. v. Regeneration Technologies, Inc., et al. Graden A. McCool, Jr., et al. v. Michael Mastromarino, et al. Velma Brock, et al. v. Regeneration Technologies, Inc., et al. Jack Blacklock, et al. v. Regeneration Technologies, Inc., et al. Genle T. Hoover, et al. v. Regeneration Technologies, Inc., et al. Daniel Ballard, et al. v. Regeneration Technologies, Inc., et al.
MINNESOTA MN 0 06-1596	Marilyn McDonald, et al. v. Medtronic, Inc., et al.
NORTH CAROLINA MIDDLE NCM 1 06-432	Donna Sanders, et al. v. Forsyth Memorial Hospital, Inc., et al. Opposed 7/25/06
NEW YORK EASTERN NYE 1 06-1610 NYE 1 06-2127 NYE 1 06-2128	Beverly Epperson v. Regeneration Technologies, Inc., et al. Sondra Nichols v. Medtronic Sofamor Danek, U.S.A., Inc., et al. Mikol Bruce Miller, et al. v. Medtronic Sofamor Danek, U.S.A., Inc., et al.

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SCHEDULE OF ACTIONS (CTO-1) - DOCKET NO. 1763

DIST. DIV. C.A. #

CASE CAPTION

NEW YORK WESTERN

~~NYW 6-06-6140~~

~~Cynthia Kennedy-McInnis, et al. v. Biomedical Tissue Services, Ltd., et al.~~ Opposed 7/20/06

OHIO NORTHERN

ohn 1 06-458

ohn 1 06-646

ohn 5 06-1252

Jacqueline McCauley, et al. v. BioMedical Tissue Services, Ltd., et al.
Betty A. Myers, et al. v. BioMedical Tissue Services, Ltd., et al.
Kelly Hatula-Bepy, et al. v. BioMedical Tissue Services, Ltd., et al.

OHIO SOUTHERN

OHS 1 06-75

James Sunderman, et al. v. Regeneration Technologies Inc., et al.

OKLAHOMA NORTHERN

~~OQN 4-06-331~~

~~Frank Davenport, et al. v. BioMedical Tissue Services, Ltd., et al.~~ Opposed 7/25/06

PENNSYLVANIA EASTERN

PAE 2 06-721

Darlene Krzywicki, et al. v. BioMedical Tissue Services, Ltd., et al.

SOUTH CAROLINA

SC 3 06-913

SC 8 06-1183

Sharon McKerley v. Medtronic Sofamor Danek USA, Inc., et al.
Kelly J. Sealy, et al. v. Medtronic Sofamor Danek, Inc., et al.

TENNESSEE EASTERN

TNE 3 06-217

Charles Wells, et al. v. BioMedical Tissue Services, Ltd., et al.

TENNESSEE WESTERN

TNW 2 06-2208

TNW 2 06-2209

Daniel R. Adams v. BioMedical Tissue Services, Ltd., et al.
Marlene Smith v. BioMedical Tissue Services, Ltd., et al.

TEXAS EASTERN

TXE 2 06-178

Alan Curt Schroeder v. Medtronic Sofamor Danek, USA, Inc., et al.

WEST VIRGINIA SOUTHERN

~~WVS 2 06-197~~

~~WVS 6 06-198~~

David Ramella v. BioMedical Tissue Services, Ltd., et al.
Jami Marie Frazier v. BioMedical Services, Ltd., et al.

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DOCKET NO. 1763
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

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PAGE 10 OF 16

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INVOLVED JUDGES LIST (CTO-1)

DOCKET NO. 1763

IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

Hon. William M. Acker, Jr.
Senior U.S. District Judge
481 Hugo L. Black U.S. Courthouse
1729 5th Avenue, North
Birmingham, AL 35203-0065

Hon. Carol Bagley Amon
U.S. District Judge
908 S U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Hon. Sarah Evans Barker
U.S. District Judge
210 Birch Bayh Federal Building & U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

Hon. Michael R. Barrett
U.S. District Judge
815 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Hon. Mark W. Bennett
Chief Judge, U.S. District Court
U.S. District Court
P.O. Box 838
Sioux City, IA 51101

Hon. Frederic Block
Senior U.S. District Judge
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Hon. James J. Brady
U.S. District Judge
369 Russell B. Long Federal Bldg.
777 Florida Street
Baton Rouge, LA 70801

Hon. J. Daniel Breen
U.S. District Judge
345 U.S. Courthouse
111 South Highland Avenue
Jackson, TN 38301

Hon. David D. Dowd, Jr.
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Two South Main Street
Akron, OH 44308

Hon. William S. Duffey, Jr.
U.S. District Judge
1721 Richard B. Russell Federal Building & U.S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303

Hon. Claire V. Eagan
Chief Judge, U.S. District Court
411 Page-Belcher Federal Bldg. & U.S. Courthouse
323 West Fourth Street
Tulsa, OK 74103

Hon. John P. Fullam
Senior U.S. District Judge
15614 James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1780

Hon. Nina Gershon
U.S. District Judge
1429 U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Hon. Joseph R. Goodwin
U.S. District Court
P.O. Box 2546
Charleston, WV 25329-2546

Hon. Paul W. Greene
U.S. Magistrate Judge
319 Hugo L. Black U.S. Courthouse
1729 Fifth Avenue North
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Hon. Henry M. Herlong, Jr.
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800 Market Street
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INVOLVED JUDGES LIST (CTO-1) - MDL-1763

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San Diego, CA 92101

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15A Carl B. Stokes U.S. Courthouse
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INVOLVED CLERKS LIST (CTO-1)
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